

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

WILLIAM MITCHELL BELL,

Plaintiff,

vs.

MD KEITH COURTNEY, *et al.*,

Defendants.

Case No. 2:11-cv-00922-LDG-PAL

**ORDER**

(Mot. Stay Disc - Dkt. #13)  
(Mot Ext Time Serve - Dkt. #17)

Before the court is Defendant Keith Courtney's Motion to Stay Discovery in Light of the Pending Motion to Dismiss (Dkt. #13) filed July 11, 2011, and Plaintiff's Motion to Extend Time to Serve Summons and Complaint (Dkt. #17).

The court has reviewed the Motion to Stay Discovery (Dkt. #13). A stay is requested because the motion to dismiss points out that Plaintiff's complaint allegations involve various state law tort claims for which the applicable statute of limitations has run. Additionally, the motion to dismiss alleges Plaintiff failed to comply with the provisions of NRS 41A.071 which requires dismissal of an action asserting a medical malpractice claim if an action is filed without an affidavit of a medical expert supporting the claim.

The Federal Rules of Civil Procedure do not provide for automatic or blanket stays of discovery when a potentially dispositive motion is pending. However, in the Ninth Circuit, district courts may exercise "wide discretion in controlling discovery." *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). The Ninth Circuit has held that a district court may enter a protective order staying discovery when a pending motion to dismiss for failure to state a claim on which relief may be granted is pending if the district court "is convinced that the Plaintiff will be unable to state a claim for relief." *Wood v.*

1 *McEwen*, 644 F.2d 797, 801 (9th Cir. 1981) (*per curiam*) (staying discovery when a court is convinced  
 2 that the Plaintiff will be unable to state a claim for relief furthers the goal of efficiency for the court and  
 3 litigants. *Little*, 863 F.2d at 685).

4 Plaintiff did not file a response to the motion and the time for filing a response has run. LR 7-  
 5 2(d) states, “[t]he failure of an opposing party to file points and authorities in response to any motion  
 6 shall constitute a consent to the granting of the motion.” For these reasons, the court finds that the  
 7 Motion to Stay Discovery (Dkt. #13) should be granted. Should any of Plaintiff’s claims survive the  
 8 motion to dismiss, the parties shall file a proposed stipulated Discovery Plan and Scheduling Order  
 9 within 30 days of the entry of the order on the Motion to Dismiss.


10 The court has also reviewed Plaintiff’s Motion to Extend Time to Serve Summons and  
 11 Complaint (Dkt. #17), and finds that good cause exists for the extension. As such,

12 **IT IS ORDERED** that:

- 13 1. Defendant Courtney’s Motion to Stay Discovery in Light of the Pending Motion to  
 14 Dismiss (Dkt. #13) is **GRANTED**.
- 15 2. Should any of Plaintiff’s claims survive the Motion to Dismiss, a Discovery Plan and  
 16 Scheduling Order will be entered within 30 days of the entry of the order on the Motion  
 17 to Dismiss.
- 18 3. Plaintiff’s Motion to Extend Time to Serve Summons and Complaint (Dkt. #17) is  
 19 **GRANTED**. The Clerk of the Court shall mail Plaintiff a blank Form USM-285 and  
 20 shall issue Summons to Defendant and deliver the same to the U.S. Marshal for service.  
 21 Plaintiff shall have twenty days in which to furnish the U.S. Marshal with the required  
 22 Form USM-285. Within twenty days after receiving from the U.S. Marshal a copy of the  
 23 Form USM-285, showing whether service has been accomplished, Plaintiff must file a  
 24 notice with the court identifying whether the Defendants were served. If Plaintiff wishes  
 25 to have service again attempted on an unserved defendant, a motion must be filed with  
 26 the court identifying the unserved defendant and specifying a more detailed name and/or  
 27 address for said defendant, or whether some other manner of service should be  
 28 attempted. Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, service must

1 be accomplished within 120 days from the date this order is entered.

2 Dated this 27<sup>th</sup> day of September, 2011.

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5 Peggy A. Teen  
6 United States Magistrate Judge  
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